

1 Adopt 2 Cal. Code Regs. section 18361.2 as follows:

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3 **18361.2. Memorandum Respecting Civil Litigation.**  
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5 (a) If the Executive Director concludes that the initiation of civil litigation should be  
6 considered, he or she shall submit to the Commission a written memorandum which summarizes  
7 the facts and the applicable law of the case and, if appropriate, recommends the initiation of a  
8 lawsuit. Included in the memorandum shall be any exculpatory and mitigating information  
9 known to the staff.

10 (b) The Commission shall review the memorandum at an executive session. No member  
11 of the staff shall be present unless the Commission concludes that the initiation of probable cause  
12 proceedings pursuant to Government Code section 83116 shall not occur. If the Commission  
13 wishes the staff to answer questions, it may meet with the staff in executive session for that  
14 limited purpose but shall not resume its deliberations until the staff is no longer present. Any  
15 communication between the Commission and the staff during the executive session shall be  
16 transcribed. After review of the memorandum, the Commission may direct the Executive  
17 Director to do any of the following:

18 (1) Initiate civil litigation;

19 (2) Decide whether probable cause proceedings should be commenced pursuant to  
20 regulation 18361.4;

21 (3) Return the matter to the staff for further investigation;

22 (4) Take no further action on the matter, unless the Executive Director indicates that  
23 further investigation would be appropriate; or

24 (5) Take whatever other action it deems appropriate.

1        (c) If the Executive Director deems it necessary, he or she may call a special meeting of  
2 the Commission to review a staff memorandum recommending the initiation of civil litigation.

3        (d) It is the intent of the Commission in adopting this section to preserve for the  
4 members of the Commission the authority to decide whether alleged violations should be  
5 adjudicated in administrative hearings or in civil litigation, while at the same time avoiding the  
6 possibility that discussions with the staff might cause members of the Commission to prejudge a  
7 case that might be heard by the Commission under Government Code section 83116.

8 NOTE: Authority cited: Section 83112, Government Code.  
9 Reference: Sections 83115, 83115.5 and 83116, Government Code.

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